

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

**Farmers & Merchants Bank of Central CA  
Loan Center-Collateral Section  
P.O. Box 3000  
Lodi, CA 95241**

(Space Above for Recorder's Use Only)

**COLLATERAL ASSIGNMENT OF TENANT'S INTEREST IN LEASE**

THIS COLLATERAL ASSIGNMENT OF TENANT'S INTEREST IN LEASE (this "Assignment") is entered into as of September 15, 2016, by and between **B&G Building Investors, LLC**, a California limited liability company ("Tenant"), and **Farmers & Merchants Bank of Central California**, a California banking association ("Bank"), and the **Capitol Area Development Authority**, a California joint powers agency ("Landlord").

**RECITALS**

A. Landlord and Tenant entered into that certain Parking Lot Lease dated November 21, 2013, as amended by a First Amendment to Parking Lot Lease dated the same date herewith (collectively, the "Lease") for lease of that certain real property commonly known as 1100 R Street, Sacramento, CA 95811, APN No. 009-0075-011-0000, as legally described in **Exhibit A**, attached hereto and incorporated herein by reference, and any and all improvements now or hereafter located thereon (such land and improvements being herein referred to collectively as the "Subject Property"). Capitalized terms not otherwise defined in this Assignment shall have the meanings ascribed to them in the Lease.

B. The Lease was made in connection with Tenant's development of the B&G Project on adjacent real property ("B&G Property") pursuant to the Third Revised DDA (as may be amended) between Landlord and Tenant. The parking spaces on the Subject Property are used in connection with the adjacent B&G Project. The Lease contains an option for Tenant to purchase the Subject Property upon certain conditions contained therein.

C. In connection with development of the B&G Project, the Bank made a construction loan to Tenant for construction of the Project and Landlord made a land loan and construction loan to Tenant ("Landlord's Loans").

D. Bank, as Lender, desires to now make a permanent takeout loan to Tenant, as Borrower (the "Loan"), evidenced by a promissory note in the principal amount of \$3,430,000.00 (the "Note") and other related loan documents of even date herewith (collectively, the "Loan Documents"); and

E. To secure the Loan, Tenant has agreed to assign to Bank, and Bank has agreed to take from Tenant, an assignment of Tenant's interest in the Lease for collateral purposes, on the terms and conditions set forth herein, and Landlord has agreed to consent to the assignment and has agreed to the other terms and conditions set forth herein.

**NOW, THEREFORE**, the parties hereto agree as follows:

AGREEMENT

1. Assignment. For value received, and as security for the Loan, Tenant hereby grants Lender a security interest in, and does hereby irrevocably assign, transfer and set over to Lender all of Tenant's right, title and interest in and to the leasehold granted and created by the Lease (except for Tenant's option rights under Section 6 of the Lease, which are **not** being assigned hereunder). As long as Tenant is not in default in the performance of any of Tenant's obligations under the Lease, and so long as there is no default under this Assignment or under any other Loan Documents, Tenant may remain in possession of the Subject Property under the terms, covenants and conditions of the Lease.

2. Representations and Warranties of Tenant. Tenant hereby represents and warrants to Bank that:

2.1 Tenant has the right to assign the Lease and no other person or entity has any right, title or interest therein;

2.2 Tenant has performed and will duly and punctually perform all of the terms, covenants, conditions and warranties of the Lease;

2.3 Tenant has not at any time, prior to the date hereof, exercised any right to subordinate the Lease to any deed of trust or mortgage or any other encumbrance of any kind;

2.4 Tenant has not executed any prior assignments of the Lease or the rents;

2.5 Tenant has performed no act or executed any other instrument which might prevent the Bank from enjoying and exercising any of its rights and privileges evidenced hereby;

2.6 The Lease is valid and subsisting and in full force and effect and unmodified;

2.7 There are no rent receipts owed to Tenant under the Lease with Landlord; and

2.8 There are no defaults now existing under the Lease and no event has occurred which with the passage of time or the giving of notice, or both, would constitute such a default.

3. Tenant Loan Default.

3.1 Notice and Possession on Default. In the event of any default by Tenant in the payment or performance of any of its obligations to the Bank under the Bank's Loan, the Bank shall give Landlord written notice prior to enforcing any remedies for such default against Tenant or the B&G Property, and Landlord shall have the right to cure such default with an equal amount of time as Tenant would have to cure it. If Landlord does not cure the default and the default of the Loan remains beyond the expiration of any applicable grace or cure period, then in addition to any other rights the Bank may have at law or in equity, the Bank shall have the immediate right to enter upon the Subject Property and take possession thereof; provided: (1) the Bank has also exercised its right to take possession of the B&G Property; and (2) the Bank assumes Tenant's obligations under the Lease, including its rental payment obligations to Landlord. The taking of possession of the Subject Property shall not relieve the Tenant of any of its obligations of performance or payment under the terms of the Lease.

3.2 Foreclosure Sale. If the Bank forecloses on the B&G Property and purchases the B&G Property at the foreclosure sale, or if the Bank takes title to the B&G Property by deed in lieu of foreclosure or by some other means, the Lease shall automatically terminate without further action by the parties. Similarly, if a third-party purchases the B&G Property at a foreclosure sale or takes title by some other means, then the Lease and this Assignment shall automatically terminate without further action by the parties. Upon transfer of title to the Bank or other party, Tenant shall have no further interest in or claim to possession of the Subject Property, and shall have no further interest in the Lease. Upon such an occurrence, Landlord agrees to honor Tenant's written parking agreements with any then-current parking tenants (as long as the agreements are not in violation of the Lease terms) by entering into new parking agreements with those tenants containing substantially the same terms as their previous parking agreements with Tenant.

4. Default of the Lease. In the event of any default by Tenant in the payment or performance of any of its obligations to Landlord under the Lease, Landlord shall give the Bank written notice prior to enforcing any remedies for such default against Tenant or the Subject Property, and the Bank shall have the right to cure such default with an equal amount of time as Tenant would have to cure it. Any amount paid by the Bank to cure a default shall constitute a demand obligation from the Tenant to the Bank. Nothing herein contained shall obligate the Bank to make such payment, nor shall the making of one or more such payments constitute an agreement on the Bank's part to take any further or similar action. If the Bank does not cure Tenant's default within the prescribed time, Landlord may terminate the Lease in accordance with the Lease terms.

5. No Waiver. Nothing contained herein and no act done or omitted by the Bank pursuant to the powers and rights granted hereunder shall be deemed to be a waiver by the Bank of its rights and remedies under the Loan Documents, or a waiver or curing of any default hereunder, or under the Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by the Bank under the terms of the Loan Documents. The right of the Bank to collect the interest and indebtedness evidenced by the Loan Documents and to enforce any other security therefor held by it may be exercised by the Bank either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

6. Term of Assignment. If the Loan and all other indebtedness secured hereby and by the Loan Documents are paid as the same become due and payable, and if all of the covenants, warranties, undertakings and agreements made in the Loan Documents and in this Assignment are kept and performed, this Assignment shall become null and void and of no further force and effect, but the affidavit, certificate, letter or statement of any officer, agent or attorney of the Bank showing any portion of the Loan or such other indebtedness to remain unpaid or any of such covenants, warranties, undertakings and agreements not to be kept or performed shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. Upon full payment of the Loan, the Bank agrees to record, in a form acceptable to Landlord, a quitclaim deed or other appropriate document to remove this Assignment from title to the Subject Property.

7. Additional Rights of the Bank.

- (a) The Bank may take or release other security for the payment of the Loan and other indebtedness secured by the Loan Documents, may release any party primarily or secondarily liable therefor, and may apply any other security held by it to the satisfaction of the Loan and such other indebtedness without prejudice to any of its rights under this Assignment. The Bank may release the Subject Property and/or the Lease, or any interest therein, from this Assignment.
- (b) The rights and remedies of the Bank hereunder shall not be impaired by any indulgence, including, but not limited to, (i) any renewal, extension, or modification that the Bank may grant with respect to any indebtedness secured hereby; (ii) any surrender, compromise, release, renewal, extension, exchange, or substitution that the Bank may grant in respect of any item of the Subject Property and/or the Lease, or any part thereof, or any interest therein; or (iii) any release or indulgence granted to any endorser, guarantor or surety of any indebtedness secured hereby.

8. Severability. A determination that any provision of this Assignment is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Assignment to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

9. Binding. The terms, provisions, representations, and warranties herein contained shall inure to the benefit of, and bind, the parties hereto and their respective heirs, representatives, successors and assigns, all Landlord approved assigns of this Lease, and subsequent holders of the Loan Documents. All references in this Assignment to Tenant or the Bank shall be deemed to include all such heirs, representatives, successors and assigns of such respective party.

10. Construction. Within this Assignment, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. The provisions of this Assignment are intended to supplement the provisions contained in the Loan Documents. In the event of any conflict between the terms of this Assignment and the terms of the Loan Documents, the terms of this Assignment shall prevail insofar as the Lease is concerned, but the terms of the Loan Documents shall prevail in all other respects.

11. No Third-Party Beneficiaries. It is expressly agreed by the parties hereto that this Assignment shall not be construed or deemed made for the benefit of any third-party or parties.

12. Entire Agreement. This Assignment and the Loan Documents contain the entire agreement concerning the assignment of the Lease between the parties hereto. No variations, modifications or changes herein or hereof shall be binding upon any party hereto, unless set forth in a document duly executed by both parties.

13. Assignment. Tenant shall not be entitled to assign any of its rights, remedies or obligations described in this Assignment without the prior written consent of Bank and Landlord, which may be withheld by Bank or Landlord in their sole discretion, respectively. Bank shall only be entitled to assign its rights and remedies described in this Assignment to subsequent holders of the Loan Documents.

14. Modification and Waiver. The modification or waiver of any obligations or rights under this Assignment must be in writing, signed by all parties. The Bank or Landlord may perform any of Tenant's obligations, or delay or fail to exercise any of its rights, without causing a waiver of those obligations or rights. A waiver on one occasion shall not constitute a waiver of any other occasion. Tenant's obligations under this Assignment shall not be affected if Bank or Landlord amends, compromises, exchanges, fails to exercise, impairs or releases any of the obligations belonging to Tenant or a third-party, or any of its rights against any tenant, third-party or collateral.

15. Applicable Law. This Assignment shall be governed by the laws of the state of California. Tenant consents to the jurisdiction and venue of Sacramento County Superior Court in the event of any legal proceeding under this Assignment.

16. Notices. All notices to be given pursuant to this Assignment shall be in writing and shall be deemed given when hand-delivered, or two business days after deposit in the U.S. mail, postage prepaid, to the parties at the addresses set forth below, or to such other place as a party may from time-to-time designate for itself by notice to the other parties. No successor or assign of a party shall be entitled to notices or opportunity to cure defaults hereunder unless notice of the transfer is given in accordance with this subsection.

17. Amendment. This Assignment may be amended only in writing, signed by the parties, but this clause shall not impair the validity of any further agreements among fewer than all of the parties as among themselves.

18. Legal Costs. In the event of any litigation, arbitration or other legal proceeding in which any party seeks to enforce its rights under this Assignment or to recover damages for the breach thereof, the prevailing party or parties shall be entitled to recover its legal costs and expenses, including, but not limited to, attorneys' fees, from the non-prevailing party or parties, whether such costs and expenses are incurred in connection with trial court proceedings, on appeal, in bankruptcy or other insolvency proceedings, in post-judgment collection proceedings, or otherwise.

19. Counterparts. This Assignment may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this Assignment as of the date first written above.

BANK:

**FARMERS & MERCHANTS BANK OF CENTRAL CALIFORNIA,**  
a California banking association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address:

Farmers & Merchants Bank of Central California  
116 West Pine Street  
Lodi, CA 95241

TENANT:

**B&G BUILDING INVESTORS, LLC,**  
a California limited liability company

By: \_\_\_\_\_  
**Behroze Miryabianeh**, Manager/Member

By: \_\_\_\_\_  
**Ali Youssefi**, Manager/Member

Address:

B&G Building Investors, LLC  
1006 4th Street, Suite 701  
Sacramento, CA 95814

LANDLORD:

**CAPITOL AREA DEVELOPMENT AUTHORITY,**  
a California joint powers agency

By: \_\_\_\_\_  
**Wendy Saunders**, Executive Director

Address:

Capitol Area Development Authority  
1522 14th Street  
Sacramento, CA 95814  
Attention: Wendy Saunders

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

**ACKNOWLEDGEMENT**

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

**ACKNOWLEDGEMENT**

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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County of \_\_\_\_\_ )

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**Exhibit A**

(Legal Description of Property)

Real property in the City of Sacramento, County of Sacramento, State of California, described as follows:

A portion of the North One-Half of the block bounded by 11th and 12th Streets and "R" & "S" Streets of the City of Sacramento, according to the Official Plat of the City of Sacramento, more particularly described as follows:

Beginning at the centerline intersection of said 11th and "R" Street; thence leaving said point of beginning and along the said centerline of "R" Street North  $71^{\circ} 29' 14''$  East, 120.60 feet to the Northwestern corner of the parcel of land as described in the "Grant Deed" document filed in the Recorder of Sacramento County, in Book 20121107, Page 128. of Official Records; thence along the Southwesterly line of said parcel of land South  $18^{\circ} 20' 56''$  East, 99.07 feet; thence leaving said Southwesterly line South  $71^{\circ} 29' 37''$  West, 120.44 feet to the said centerline of 11th Street; thence along the said centerline of 11th Street North  $18^{\circ} 26' 27''$  West, 99.06 feet to the said point of beginning.

The basis of bearings for this legal description is based on the re-establishment of the centerline of "S" by the split of an existing improvements and found monuments; that bearing being South  $71^{\circ} 30' 00''$  West per the Record of Survey filed in the Office of the Recorder of Sacramento County in Book 56 of Surveys, at Page 18.